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Florida Department of Agriculture and Consumer Services
CHARLES H. BRONSON, Commissioner
 The Capitol • Tallahassee, FL 32399-0800

Please Respond to:

November 1, 2002

Mr. Michael K. Powell
 Chairman
 Federal Communications Commission
 445 12th Street, SW
 Washington, DC 20554

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JAN - 8 2003

GC Docket No. 02-278

Federal Communications Commission
 Office of the Secretary

Dear Chairman Powell:

In Florida, we have undertaken a tremendous effort to provide consumers with privacy protection while, at the same time, balancing the interests of businesses. Given our shared desire to afford consumers the greatest level of protection from unwanted telemarketing calls, I am compelled to write you today. I want to voice my concerns regarding the Federal Communications Commission's (FCC) review of its implementing rules for the Telephone Consumer Protection Act of 1991 (TCPA) specifically any proposal that would preempt state "No Call" statutes.

I am hopeful that the proposed federal regulation will serve to augment and complement existing state efforts in this area. Consumers are best protected when state and federal resources and talents are used in conjunction with one another. I believe we all recognize that, unless carefully crafted, the adoption of a federal rule that does not actively partner with the states will lead to erosion in consumer protection by creating gaps in enforcement. As the elected official charged with providing consumer services to Florida's citizens, I am greatly encouraged by the efforts of the FCC with regard to the proposed rule. However, my concern is that we find a way to use our respective resources creatively in such a way that consumer protection is advanced even further beyond the high level we currently enjoy in Florida. In reviewing the Notice of Proposed Rulemaking (NPRM), we have identified several areas of concern and we are hopeful that you will help resolve them as you move toward final rulemaking on this issue.

The FCC's proposed rulemaking seeks comments on the use of autodialers and predictive dialers. These two technologies are responsible for a large number of consumer complaints to Florida's Consumer Hotline. It is our opinion that if not banned altogether, they should only be used if an operator is available to talk when the phone is answered. If no operator is available, the autodialer should terminate the call before the phone begins to ring. We are hopeful the final rule includes FCC enforcement authority for this provision.



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States often charge consumers a nominal fee to have their names placed on a "no calls" list. These fees, along with revenues generated from list sales and fines levied as a result of enforcement actions, pay the costs associated with providing consumer service, handling consumer complaints and pursuing enforcement activities relating to telemarketers in violation of state law. The practical effect of free registration on a national "No Call" registry that applies to intrastate calls will certainly be the downsizing, if not outright elimination, of states' "No Call" programs. The FCC's proposed action, coupled with the Federal Trade Commission's recent rulemaking on a national "No Call" registry, will certainly broaden the number of people on a registry. However, we anticipate that most consumers will continue to direct complaints to the state agency charged with consumer protection. How does the FCC anticipate the ability of states to review and process the thousands of complaints they will receive each month when funding is no longer available to support such programs? We know from experience in Florida that it is a tremendous task to verify complaints to determine their validity, as consumers oftentimes are unable to provide complete information about a call.

Enforcement is another key concern. It is anticipated, based on information we have received, that the states will enforce the national "No Call" Registry. Nevertheless, under federal law, states currently may only seek injunctive relief when enforcing the Telemarketing Sales Rule. Knowing that states are grappling with many of the same budgetary issues as the federal government, again what provisions has the FCC made for states to be able to provide enforcement for the national "No Call" Registry when the necessary budgetary resources to provide such enforcement are no longer available?

Additionally, what remedies will be available at the federal level to ensure consumer privacy? We continue to view the invasion of a consumer's privacy as a serious problem when said consumer does not want to be contacted at his or her home.

The right of the consumer must remain the paramount focus no matter what avenues are pursued on the federal level. Educating consumers will be vital to the success of any program, and I am committed to working with the FCC in this regard. However, we are all responsible to the citizens to ensure the work we have initiated over the past few years to establish "No Call" programs on the state level does not become eroded through well-intended federal legislation.

I appreciate any assistance you can provide on these critical but as of yet unresolved issues. Please feel free to contact me if you should have any questions or require additional information.

Sincerely,



CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE